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July 14, 2000

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JUL 14 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CS Docket No. 00-96/
SHVIA Broadcast Signal Carriage Issues

Dear Ms. Salas:

On behalf of Mid-State Television, Inc., enclosed please find an original and four copies of Mid-State Television's Comments in response to the Commission's June 9, 2000 Notice of Proposed Rulemaking in the above-captioned proceeding.

If there are any questions, please contact me.

Very truly yours,



Paul J. Feldman
Counsel for Mid-State Television, Inc.

Enclosure

cc: Mr. Gunther Meisse (w/encl.)
Vincent J. Curtis Jr., Esq. (w/encl.)

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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JUL 1, 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Satellite Home
Viewer Improvement Act of 1999)

Broadcast Signal Carriage Issues)

CS Docket No. 00-96

RECEIVED

JUL 14 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**COMMENTS OF MID-STATE TELEVISION, INC.**

Mid-State Television, Inc., licensee of Station WMFD(TV), Mansfield, Ohio, ("Mid-State"), by its attorneys, hereby submits its comments in response to the Commission's June 9, 2000 Notice of Proposed Rulemaking ("*Notice*") in the above-captioned proceeding. In these comments, Mid-State urges the Commission to implement a mechanism to modify "local markets" for the purposes of the carriage obligations set forth in Section 338 of the Communications Act. Such a market modification mechanism would promote Congress' goals of placing cable and satellite operators on an equal footing, and protecting and fostering free local over-the-air television stations.

I. Introduction

Station WMFD is an independent commercial station uniquely located on the edge of three different television designated market areas ("DMAs"). The Station is licensed to Mansfield, Ohio, which is located in the Cleveland ADI, although Cleveland

is 65 miles northeast of Mansfield. In addition to covering the southern half of the Cleveland ADI, the WMFD service area also includes numerous counties in the northern portion of the Columbus, Ohio DMA (Columbus is 65 miles southwest of Mansfield), and two counties in the southeastern portion of the Toledo DMA (Toledo is 70 miles northwest of Mansfield).¹

The communities in the WMFD service area are all smaller and located a significant distance from Cleveland, Toledo, or Columbus, and as a result, do not receive significant coverage of local news and events from stations licensed to Cleveland, Toledo, or Columbus. Station WMFD does, however, fill in this gap by providing substantial amounts of local news, weather and sports programming.

While Station WMFD has a strong over-the-air signal covering its service area, the fact of the matter is that the majority of the viewers in the WMFD service area (like viewers in most markets) receive their television service through cable TV, rather than off the air. However, a station's cable TV must carry rights are primarily determined by the DMA of its city of license, rather than by its over-the-air service area, and as a result, stations like WMFD, whose service areas cover multiple DMAs, can be denied substantial portions of the viewers in their service areas. Without access to such viewers, stations lose a substantial portion of their economic viability, and viewers lose access to locally oriented programming.

Luckily, there is a remedy for this problem, at least as applied to cable TV. The Commission's must-carry rules provide for a market modification mechanism that allows

¹ A map of this area is appended hereto as Attachment 1.

stations such as WMFD to add communities to their “local market”, upon a showing that the station actually serves such communities, regardless of the borders drawn in DMAs. Mid-State has used this process, and as a result, the Commission has added seven communities in the Columbus market and one community in the Toledo market to Station WMFD’s “local market” for the purposes of cable TV must-carry.²

In sum, cable carriage has been critical to allowing viewers access to the WMFD signal, and similarly critical to the economic stability of the Station. Such economic stability has allowed the Station to provide high quality programming for free over the air to viewers who are able to receive the signal in that manner. However, as DBS satellite service continues to increase its market share *vis a vis* cable TV, the Commission must recognize the growing importance of carriage on satellite services to the healthy maintenance of local television stations. Key to that survival is creating appropriate and realistic satellite TV markets.

II. Implementing a Market Modification Mechanism is Necessary to Promote Congress’ Goal of Protecting Free Over-the-Air Television Service, and Placing Satellite and Cable Operators on Equal Terms.

Section 338 (a)(1) of the Communications Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999,³ provides that after December 31, 2002, each satellite carrier providing television broadcast signals under the compulsory copyright licensing system to subscribers in the local market of a television station must carry upon request all of the television stations within that local market. Section 338(h)(3) of

² *In Re: Mid-State Television, Inc.*, 10 FCC Rcd 7109 (CSB, 1995).

³ Pub. Law 106-113, 113 Stat. 1501 (“SHVIA”).

the Act defines the term “local market” as having the meaning given in Section 122(j) of Title 17 of the U.S. Code, which defines the term to primarily mean the DMA in which a station is located, including the County in which the station’s community of license is located. Section 122(j)(2)(C) requires use of the 1999-2000 Nielsen Station Index Directory and any successor publication to define DMAs.

In paragraphs 15 and 16 of the *Notice*, the Commission notes that while Section 614 of the Act provides a mechanism for modifying markets for cable TV must-carry, Section 338 does not explicitly provide for such a mechanism. The *Notice* asks whether the Commission has the authority to implement a market modification mechanism for satellite carriage purposes. Mid-State submits that the Commission does have such authority, given that implementation of such a mechanism is necessary to promote Congress’ goals of preserving free over-the-air television, and placing cable and satellite operators on relatively equal terms.

First, it is clear that in enacting the satellite carriage portions of SHVIA, Congress intended to strengthen local broadcasters, so that satellite subscribers have access to local programming, and so that free local over-the-air service is preserved for viewers who are not subscribers of satellite service. Indeed, the SHVIA Conference Report states:

... the Conference Committee reasserts the importance of protecting and fostering the system of television networks as they relate to the concept of localism. It is well recognized that television broadcast stations provide valuable programming tailored to local needs, such as news, weather, special announcements and information related to local activities. To that end, the Committee has structured the copyright licensing regime for satellite to encourage and promote retransmissions by satellite of local television broadcast stations to subscribers who reside in the local

markets of those stations.⁴

... the conferees are confident that the proposed license provisions would pass constitutional muster even if subjected to the O'Brien standard applied to the cable must-carry requirement. [Citation omitted] The proposed provisions are intended to preserve free television for those not served by satellite or cable systems and to promote widespread dissemination of information from a multiplicity of sources. [Emphasis added] The Conference Committee is concerned that, absent must-carry obligations, satellite carriers would carry the major network affiliates and few other signals. Non-carried stations would face the same loss of viewership Congress previously found with respect to cable noncarriage.⁵ [Citation omitted]

A market modification mechanism will further the goal of preserving localism in two ways. First, it will help ensure that satellite carriage markets actually reflect what is truly local, in the situations where Nielsen DMAs are not precise for such uses, or when circumstances regarding a market change between the time a particular Nielsen publication determines a market, and the time when the Commission selects use of a more updated Nielsen publication. Second, because use of a market mechanism will assist television stations in reaching additional satellite subscribers, such additional viewership will add to the economic stability of stations, thus allowing them to produce more and better local programming for all viewers, including those who receive the broadcast signal over-the-air.

In addition to promoting Congress' goal of protecting free over-the-air television service, enactment of a market modification mechanism would also promote Congress'

⁴ Joint Explanatory Statement of the Committee of Conference on H.R. 1554, 106th Cong. ("Conference Report"), 145 Cong. Rec. at H11792 (daily ed. Nov. 9, 1999).

⁵ *Id.* at H11795.

goal of placing satellite and cable TV operators on reasonably equal terms. That goal is evident by review of the Conference Report, which states that the carriage/licensing requirements of SHVIA “place satellite carrier [sic] in a comparable position to cable systems, competing for the same customers.”⁶

In sum, the Commission has the authority to enact a market modification mechanism in order to fulfill Congress’ goals in SHVIA. Moreover, in addition to having the authority to do so, enactment of such a mechanism will indeed promote the availability of free over-the-air television service, and the provision of local programming to satellite subscribers.

III. A Market Modification Mechanism Should Take Into Account The Cable Modification Criteria, and Previous Cable Market Modification Orders.

The *Notice* asks (at paragraph 16) whether the procedural and evidentiary standards for a satellite market modification mechanism should be the same as those for cable TV market modification mechanisms. Mid-State suggests that as a general matter, the “evidentiary standards” should be similar, in order to be consistent with the principle that satellite and cable TV operators should be placed in similar positions. In looking at the four criteria set forth in Section 614(h) of the Communications Act, and in Section 76.59 of the Commission’s rules, Mid-State notes the following:

-Historical carriage on other systems in the same area. Carriage of other stations licensed to the same community as a petitioning station, on the subject satellite system in the target area, should be a relevant criterion: it suggests that the satellite operator considers the Stations’ city of license to be in the target

⁶ *Id.*

community's "local market, and prevents unfair discrimination by the satellite carrier among stations in the same market. Historical carriage of the petitioning station on a satellite system other than the system against which the petition is filed should be evidence in favor of a petitioning station, but the Commission should be mindful of the fact that (unlike the facts surrounding cable TV in 1993 when cable must-carry rules were enacted) there will be little "history" of carriage on satellite systems for any station, at least at this time. However, carriage of the petitioning station on cable TV systems in the target area should be evidence in favor of modifying the station's satellite carriage market to include that area. Such an approach places the satellite and cable TV operators on relatively equal footing. In addition, such an approach recognizes that if the petitioning station is carried on cable TV systems in the target area as a result of the commercial judgment of the operator, such a judgement is persuasive. Furthermore, if the petitioning station is carried on cable TV systems in the target area as a result of a previous Commission order modifying the petitioning station's cable TV market, the findings that the station serves that area in previous Order should be followed in the context of modifying satellite carriage markets. There is no rational basis for the Commission to find that a station is local for a cable market, but not local for a satellite market.

-Station coverage of or local service to the target community. The Commission has typically interpreted this criterion to mean predicted Grade B signal coverage over the target community by the petitioning station, or broadcast by the station of programming addressing matters specifically impacting the target community. Such a criterion appears to be appropriate for consideration in the context of satellite carriage petitions.

-Coverage by other stations of issues and events of importance to the target community. The Commission has typically interpreted this criterion to apply only in cases where an operator has petitioned to delete a station from a particular market. There is no reason to treat the criterion any differently in the context of satellite carriage markets.

-Evidence of viewing patterns of the station in the target area. The Commission has typically recognized that while this criterion is relevant, it is not determinative, in cable TV market modification proceedings. This appears to be a rational approach for satellite carriage proceedings as well.

In sum, the statutory criteria for cable TV market modification proceedings appear to be relevant in the context of satellite carriage as well, with the exceptions noted above to reflect the lack of "historical" carriage on relatively new satellite systems. In any case, if the petitioning station is carried on cable TV systems in the target area as a result of a

previous Commission order modifying the petitioning station's cable TV market, the findings regarding those communities should be followed in the context of modifying satellite carriage markets.

IV. Conclusion

The Commission should implement a mechanism to modify "local markets" for the purposes of the carriage obligations set forth in Section 338 of the Communications Act. Such a market modification mechanism would promote Congress' goals of placing cable and satellite operators on an equal footing, and protecting and fostering free local over-the-air television stations.

WHEREFORE, Mid-State Television, Inc. requests that the Commission enact rules as set forth above.

Respectfully submitted,

MID-STATE TELEVISION, INC.

A handwritten signature in black ink, appearing to read "Paul J. Feldman", written over a horizontal line.

Vincent J. Curtis, Jr.

Paul J. Feldman

July 14, 2000

Its Attorneys

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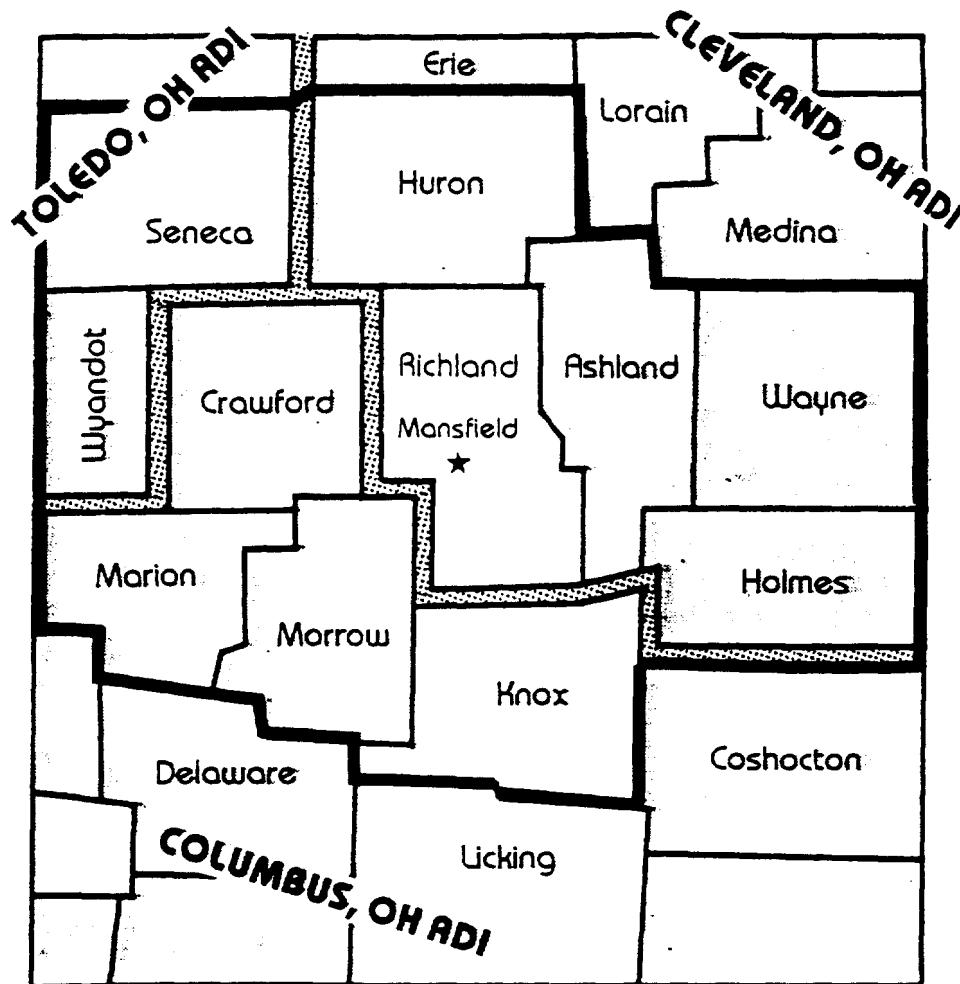
ATTACHMENT 1

WMFD-TV

Mansfield, Ohio

(Cleveland ADI)

Service Area



WMFD, at the hub of this dynamic, growing, regional retail center. Sixty miles from Cleveland and Columbus. The Mansfield market is isolated and not served locally by either. WMFD's emphasis on local news, sports and weather focuses us on the market.